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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,535	03/15/2004	Sujal M. Patel	RN 25C1 (2635-024-05)	1306
72455	7590	08/07/2008		
Graybeal Jackson Haley c/o RealNetworks			EXAMINER	
Graybeal Jackson Haley LLP			NGO, NGUYEN HOANG	
155 - 108th Ave NE Suite 350				
Bellevue, WA 98004-5973			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			08/07/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/800,535

**Applicant(s)**

PATEL ET AL.

**Examiner**

NGUYEN NGO

**Art Unit**

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/20/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This communication is in response to the amendment of 5/20/2008. All changes made to the Claims have been entered. Accordingly, Claims 1-49 are currently pending in the application.

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the transmission period, and base period must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

It should be noted that nowhere in the drawings is there a transmission period or a base period.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-49 contain subject matter such as transmission period and base period which are nowhere found in the specification. It should further be noted that the independent claims do not clearly define what a transmission period and base period is, as well as transmission latency. It is well known in the art, that a transmission latency is the delay in transmission from a transmitter to a receiver, thus the latency will never be less than zero. Thus applicant is urged to clarify what is meant by transmission latency, as well as clarify what is meant by transmission period and base period seen throughout the claims.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner is unclear on what is meant by transmission period, base period, and transmission latency. Nowhere in the specification or drawing is there such terms of transmission period and base period. Thus Examiner interprets transmission period for receiving a data packet to correlate to the point of time at which a packet is received and base period to correlate to the point of time at which a packet is transmitted. Thus it is well known that transmission latency is determined by subtracting the point of time at which a packet is transmitted from the point of time a packet is received.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1-4, 6-9, 11-14, 16-18, 20-23, 25, 27, 30, 33, 34, 36, 37, 40-42, 44, 45, 48, are rejected under 35 U.S.C. 102(e) as being anticipated by Ravikanth (US 6327274), hereinafter referred to as Ravikanth.

**Regarding claim 1, 6, 11, 16, 20, 27, 37, 45,** Ravikanth discloses a method of determining network conditions, the method comprising:

determining a transmission period for receiving a data packet (time at which packet N is received by a host machine of a receiver D);

subtracting a base period (time at which packet N is sent by a host machine of a sender S, col3 lines 50-55) from the transmission period to determine a transmission latency (delay experienced by packet N, measured by the destination node D is  $\text{Delay} = T(\text{received}) - T(\text{sent})$ , col4 lines 45-48); and

in response to the transmission latency being less than 0, modifying the base period (when latency is not less than 0, no modifying of base period needed).

**Regarding claim 2, 12, 21, 23, 25, 33, 34, 36, 41, 42, 44,** Ravikanth discloses the method of claim 1, wherein determining the transmission period includes:

reading a timestamp included in the data packet, wherein the timestamp includes the time that the data packet was sent (timestamps that are carried in the packet sent from sender to receiver, col4 lines 1-5 and figure 1); and

modifying the time of the timestamp to account for any clock skew (col4 lines 51-60).

**Regarding claim 3, 7, 8, 13, 17, 22,** Ravikanth discloses the method of Claim 1, additionally comprising reporting to a software module the transmission latency (col2 lines 41-58).

**Regarding claim 4, 9, 14, 18,** Ravikanth discloses the method of Claim 1, wherein the data packets is one of a plurality of data packets that collectively comprise a portion of a media presentation rendered to a user (data packets such as the ones used by multimedia applications, col5 lines 4-10).

**Regarding claim 30, 40, 48,** Ravikanth discloses the method of claim 25, wherein a timestamp comprises a clock value (time at which packet was sent, col6 lines 35-40 and figure 1).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 5, 8, 10, 15, 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over by Ravikanth (US 6327274), hereinafter referred to as Ravikanth.

**Regarding claim 5, 10, 15, 19,** Ravikanth fails to specifically disclose wherein the plurality of data packets are received via a modem. Ravikanth however discloses of a second node for receiving the plurality of packets as seen in figure 1. It would have thus been obvious to have the destination node (108) of figure 1 be a modem, as it is well known in the art to have destination nodes be modems in order to ensure proper communication to a user.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN NGO whose telephone number is (571)272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571)272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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**Nguyen Ngo**

United States Patent & Trademark Office

Patent Examiner AU 2663

(571) 272-8398

/N. N./

Examiner, Art Unit 2616

/FIRMIN BACKER/

Supervisory Patent Examiner, Art Unit 2616